IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 12, 2002 Session

# VULCAN MATERIALS COMPANY v. KITSMILLER AND COMPANY, ET AL.

**Appeal from the Chancery Court for Hamilton County**
**No. 00-0589 W. Frank Brown, III, Chancellor**

**FILED MAY 22, 2002**

**No. E2001-02044-COA-R3-CV**

Vulcan Materials Company ("Vulcan") brought this action seeking to enforce a materialman's lien against a piece of property at 1300 Market Street, Chattanooga ("the subject property"). Vulcan's complaint originally named as defendants, Seaboard Farms of Chattanooga ("Seaboard")[1] – the owner of the subject property when Vulcan first delivered materials to a construction site on the property – and another entity that the plaintiff simply identified as "Conagra."[2] It is alleged in the complaint that "Conagra" owned the subject property at the time the lawsuit was filed. The trial court allowed Vulcan to amend its complaint to identify "Conagra" by its correct name, *i.e.*, ConAgra Poultry Company ("ConAgra Poultry"), and held that the amended complaint related back to the date of filing of the original complaint. Presented with cross motions for summary judgment, the trial court initially ruled that Vulcan violated the statutory scheme pertaining to real property liens because it failed to mail a notice of lien to ConAgra Poultry. Upon Vulcan's motion to alter or amend the judgment, the trial court reversed itself, ruling that Vulcan had perfected its lien as to ConAgra Poultry by filing a notice of lien in the Register of Deeds' office within 90 days of the date of the last delivery of materials. The trial court then granted Vulcan summary judgment. Seaboard and ConAgra Poultry appeal. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS and D. MICHAEL SWINEY, J.J., joined.

[1] The correct name of Seaboard is Seaboard Farms of Chattanooga, *Inc.*

[2] Vulcan's complaint also named as a defendant, Kitsmiller and Company ("Kitsmiller"), the entity that ordered the materials that were incorporated into the improvement on the subject property. Subsequent to the last delivery of material, Kitsmiller went into bankruptcy. Apparently because no affirmative relief is sought in the instant action against Kitsmiller or its property, the Bankruptcy Court entered an order permitting Kitsmiller to be named as a defendant in this case. Kitsmiller is not involved on this appeal.

K. Stephen Powers and Stephen G. Kabalka, Chattanooga, Tennessee, for the appellants, Seaboard Farms of Chattanooga, Inc., and ConAgra Poultry Company.

Gary E. Lester and Robert S. Grot, Chattanooga, Tennessee, for the appellee, Vulcan Materials Company.

## OPINION

I.

In 1999, Kitsmiller and Company ("Kitsmiller") contracted with Vulcan to purchase asphalt, stone, and emulsion products to be used by Kitsmiller in constructing an improvement on the subject property. The property was then owned by Seaboard, which had previously contracted with Kitsmiller to construct the subject improvement. The total cost of the products received from Vulcan was $59,217.39. Vulcan delivered the materials to the subject property at various times beginning on November 20, 1999. Materials were last delivered to the site on January 6, 2000. Prior to that date, on January 3, 2000, Seaboard transferred title to the property by quit claim deed to ConAgra Poultry. The deed was recorded in the Hamilton County Register of Deeds' office on January 13, 2000.

Kitsmiller was paid for the supplied materials, but it failed to pay Vulcan. Vulcan mailed a notice of non-payment to Kitsmiller and Seaboard on February 16, 2000. On March 2, 2000, Vulcan filed a notice of lien against the subject property in the Register of Deeds' Office, listing Seaboard as the owner, and sent notice of that action to Kitsmiller and Seaboard. On May 30, 2000, Vulcan filed this action against Kitsmiller, Seaboard, and "Conagra."

On May 31, 2000, the Clerk and Master issued a summons directed to the three defendants. The summons as to "Conagra" was directed to its assumed registered agent for service of process, "C.T. Corp Systems, 530 Gay St. Knoxville, TN 37902." The Sheriff returned the summons as to "Conagra" unserved. His return, dated June 19, 2000, reflects the following:

> C.T. would not accept! Need complete corp. name[.] Multipli[sic] listing for Conagra.

The record reflects that the Sheriff's return was filed in this action on June 26, 2000.

An alias summons was issued by the Clerk and Master on July 11, 2000, directed to "ConAgra Poultry Company c/o Prentice Hall Corporation, 2908 Poston Ave., Nashville, TN 37203." This summons was served on Prentice Hall Corporation on July 17, 2000. ConAgra Poultry, "appearing specially," filed an answer on August 15, 2000. Seaboard filed its answer on July 19, 2000.

Seaboard and ConAgra Poultry filed a joint motion for summary judgment on September 14, 2000. In their motion, the defendants asserted that there is no genuine issue of material fact and that they are entitled to a judgment as a matter of law with respect to the following:

> [Vulcan] has failed to properly file and serve a Notice of Lien and a Notice of Non-Payment in accordance with, and within the time required by, [T.C.A.] § 66-11-101 *et seq.*, and therefore does not have a valid lien upon which it can bring this suit.

On September 25, 2000, Vulcan filed a motion for leave to amend its complaint, seeking, among other things, to amend the original complaint to reflect the true names of the defendants, *i.e.*, Seaboard Farms of Chattanooga, Inc. and ConAgra Poultry Company. On September 26, 2000, Vulcan filed its own motion for summary judgment asserting that it "filed and served its Notice of Lien and Notice of Non-payment as is required under [T.C.A.] § 66-11-101 *et seq*. and other applicable law, thus it has a valid lien upon which [its] suit is based."

Vulcan's motion for leave to amend its original complaint was heard by the trial court on October 16, 2000. Without objection, Vulcan's motion to substitute Seaboard Farms of Chattanooga, Inc. for Seaboard Farms of Chattanooga was granted. Over the objection of the defendants, the trial court granted Vulcan's motion to substitute ConAgra Poultry Company for "Conagra." In allowing the latter amendment, the trial court stated that "it expresses no opinion as to whether the amendment relates back to the date of the original complaint." The trial court's order granting the two amendments was entered October 19, 2000.

The parties' cross motions for summary judgment were heard by the trial court on November 20, 2000. Thereafter, on December 1, 2000, the trial court filed a memorandum and order finding and holding that the amendment naming ConAgra Poultry as the proper defendant related back to the date of filing of the original complaint. The trial court opined as follows:

> The original Complaint in this cause was filed May 30, 2000. On July 17, 2000 ConAgra Poultry received service in this suit. Thus, ConAgra Poultry had notice within 120 days from the commencement of the action. Relating the amendments to the Complaint back to the date the Complaint was originally filed does not prejudice any of ConAgra Poultry's defenses as to the merits of this case. ConAgra Poultry can and has made well supported arguments as to the merits of the case based on the contents of the Notice of Lien filed by Vulcan in this case. Further, ConAgra Poultry should know that but for Vulcan's mistake as to which "ConAgra" to sue, it would have been named by Vulcan in the original Complaint.

In the same memorandum and order, the trial court held that Vulcan did not provide the "owner" of the property – found by the trial court to be ConAgra Poultry – with a notice of lien as required by T.C.A. § 66-11-115(b) (1993). Consequently, Vulcan's lien was ruled invalid and the court granted Seaboard and ConAgra Poultry summary judgment, dismissing the amended complaint, except as to Vulcan's *quantum meruit* claim.

On December 28, 2000, Vulcan filed a motion styled "Motion to Alter or Amend Judgment and/or for Relief from Judgment." In its motion, Vulcan argued again that it had perfected its lien as to ConAgra Poultry. It made other legal arguments under various provisions of the Rules of Civil Procedure. It also attempted to bring before the trial court certain facts that it had not previously presented:

> Although Plaintiff persists in its contention that written Notice of Lien is not required to be provided to ConAgra as "owner" contemplated under § 66-11-115(b), following this Court's entry of summary judgment against Plaintiff on December 1, 2000, Plaintiff discovered that it had in fact served notice of its materialman's lien on defendant ConAgra Poultry Company. Plaintiff contends that it did so when it sent the Notice of Lien to 414 West 16th Street, Chattanooga, Tennessee via certified mail within the statutory period. The Notice of Lien was received by and signed for at 414 West 16th Street, Chattanooga, Tennessee on March 6, 2000. ConAgra Poultry Company was the owner of the property at 414 West 16th Street, Chattanooga, Tennessee on March 6, 2000. Thus, this evidence is sufficient to establish that ConAgra Poultry Company did receive Notice of Lien within the statutory period.

The trial court, in an extensive memorandum opinion filed March 22, 2001, found that it had erred in its previous grant of summary judgment to the defendants. The trial court held that Vulcan had timely mailed a notice of non-payment in compliance with T.C.A. § 66-11-145 (Supp. 2001) and had filed a notice of lien as required by T.C.A. § 66-11-112 (1993), and, therefore, had properly perfected its lien as to ConAgra Poultry.[3] The court granted Vulcan summary judgment.[4] The trial court's final judgment provides that Vulcan has a valid and enforceable lien against the subject property in the amount of $59,217.39. The judgment goes on to grant Vulcan a judgment against Seaboard and ConAgra Poultry "jointly and severally" for that amount.

Seaboard and ConAgra Poultry appeal, raising three issues: whether the trial court erred in granting Vulcan's amendment and in ruling that the amended complaint against the correctly-named

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[3] Seaboard does not contend that Vulcan failed to satisfy any statutory requirements as to it. It simply argues that the lien claim cannot be pursued as to property that now belongs to ConAgra Poultry.

[4] Vulcan's claim under the theory of *quantum meruit* was dismissed with prejudice.

ConAgra Poultry related back to the date of filing of the original complaint; whether the trial court erred in granting Vulcan's motion to alter or amend the judgment; and whether the trial court was correct in ruling that Vulcan had properly perfected its materialman's lien.

II.

A.

The defendants contend that the trial court erred in allowing Vulcan to amend its complaint to name ConAgra Poultry as a defendant in place of the originally-sued "Conagra." In addition, they argue that the trial court should not have decreed that the amendment related back to the date of filing of the original complaint.

B.

In an attempt to obtain a reversal of the trial court's decision to permit the amendment in the first place, the defendants point out that Vulcan's complaint recites, in the words of that document, that "[b]y deed registered in the Hamilton County Register of Deeds on January 13, 2000, Seaboard conveyed certain real property...to Conagra." The defendants argue that this allegation demonstrates that Vulcan was aware, at the time it filed the original complaint, that there was a relevant deed in the Register of Deeds' office and, hence, knew or should have known the correct name of the grantee in that deed, *i.e.*, ConAgra Poultry. They contend that this early knowledge is a sufficient basis for barring Vulcan from amending its complaint to reflect that which it knew at the earlier time.

The decision of the trial court to allow the amendment is reviewed by us pursuant to an abuse of discretion standard. ***Wilson v. Ricciardi***, 778 S.W.2d 450, 453 (Tenn. Ct. App. 1989). In making this evaluation, we are guided by the principle that "leave [to amend] shall be freely given when justice so requires." Tenn. R. Civ. P. 15.01. *See also* ***Wilson***, 778 S.W.2d at 453 ("The rule provides that permission to amend be liberally granted.")

While arguably the complaint does show that Vulcan knew or should have known the correct name of the owner of the subject property, we do not find that this is a *per se* bar to the requested amendment to change the name of the defendant from "Conagra" to ConAgra Poultry. The defendants have not demonstrated how the allowance of the amendment prejudiced them in asserting a vigorous defense on the merits. We do not find that the trial court abused its discretion in allowing the amendment.

C.

The defendants' primary complaint about the amendment is directed at the decision of the trial court to relate the filing of the amendment back to the date of filing of the original complaint. Obviously, the defendants would hope to make the amendment effective as of the date it was granted by the trial court – in October, 2000, more than 90 days after the filing of the notice of lien on March

2, 2000. This is because a suit filed against ConAgra Poultry in October, 2000, comes too late. *See* T.C.A. § 66-11-115(c) (1993).

Tenn. R. Civ. P. 15.03 provides as follows:

> Whenever the claim or defense asserted in amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party or the naming of the party by or against whom a claim is asserted relates back if the foregoing provision is satisfied and if, within the period provided by law for commencing an action or within 120 days after commencement of the action, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

When an amendment "chang[es] the party or the naming of the party," the rule provides that "the amendment relates back to the date of the original pleading" – in this case, the original complaint – if three conditions are satisfied. ***Id***. The first requirement is that the amended complaint must "ar[ise] out of the conduct, transaction, or occurrence" in the original complaint. ***Id***. Since the thrust of the action in the amended complaint is identical to that of the cause of action asserted in the original complaint, this requirement is clearly satisfied. The defendants do not argue otherwise.

We agree with the trial court's decision finding that the latter two requirements in Rule 15.03 for the application of the relation back doctrine have been satisfied in this case. When the original complaint was served upon ConAgra Poultry on July 17, 2000 – "within 120 days after commencement of the action" on May 30, 2000 – it would have then been clear to ConAgra Poultry that the alleged cause of action in the original complaint pertained to property purchased by it on January 3, 2000. ConAgra Poultry had to have known at that time – from a casual perusal of the original complaint – that property owned by it was the "target" of Vulcan's complaint to enforce its lien.

Finally, we agree with the trial court that ConAgra Poultry was not "prejudiced in maintaining a defense on the merits" by the delayed notice of the filing of the original complaint. ***Id***. On the contrary, the record is quite clear that ConAgra Poultry was able to assert – and did assert – its defenses to Vulcan's claim.

We conclude that relation back of the amendment naming ConAgra Poultry as a defendant to the date of filing of the original complaint was mandated by Rule 15.03.[5] Accordingly, we find that the complaint against ConAgra Poultry was timely filed as of March 3, 2000, within 90 days of the filing of the notice of lien. The defendants' issue on this subject is found to be without merit.

III.

The defendants argue that the trial court was in error in granting Vulcan's motion to alter or amend the court's original decision, pursuant to which decision Vulcan's complaint to enforce its materialman's lien had been dismissed. We disagree.

Vulcan's motion with respect to the trial court's original decision made a broad and sweeping attack on both factual and legal grounds. The defendants claim that the new factual matters asserted in the motion are not substantiated by verified proof and, in any event, that Vulcan failed to show why these matters could not have been raised at an earlier time. The defendants also make various and sundry legal arguments.

While we agree with the defendants that the new factual allegations of the motion are not substantiated by verified evidence, we note that these new "facts" played no role in the trial court's decision to reverse its earlier judgment. On the contrary, the trial court simply decided that it had erred, *as a matter of law*, when it ruled that Vulcan had not perfected its lien. The trial court's decision to reverse its earlier judgment did not rely, in any way, on the "new" facts asserted in Vulcan's motion. Accordingly, we do not find it necessary to decide whether Vulcan's motion should have been granted based upon the new factual allegations.

In its motion, Vulcan again argued that "written Notice of Lien is not required to be provided to ConAgra [Poultry] as 'owner' under [T.C.A.] § 66-11-115(b)." It is true that Vulcan claimed that it was entitled to relief for a variety of reasons under "Rule 52.02, Rule 59.04 and Rule 60.02(1)(2)" and because the trial court's earlier judgment was "based upon an error of interpretation of the case law and statutory law." However, it is clear from the trial court's subsequent memorandum and order reversing its earlier decision that the trial court only focused on that part of the motion in which Vulcan argued that it had properly perfected its lien as to ConAgra Poultry.

The earlier judgment discussing Vulcan's complaint was a judgment for partial summary judgment. This is because Vulcan's complaint for *quantum meruit* survived the entry of the earlier order. Shortly after the entry of the earlier order, Vulcan again sought, by its motion, to convince the trial court that the court had made an error of law. This portion of Vulcan's motion was certainly appropriate. ***Cf. Harris v. Chern***, 33 S.W.3d 741, 743 (Tenn. 2000) ("[T]he rules allow for motions

[5]With respect to the defendants' contention that Vulcan was negligent or delinquent in originally suing "Conagra" when it should have known that ConAgra Poultry was the correct defendant, there is nothing in the language of Rule 15.03 to indicate that such negligence or delinquency is an appropriate consideration in applying the rule. ***Cf. Townes v. Sunbeam Oster Co., Inc.***, 50 S.W.3d 446, 450 (Tenn. Ct. App. 2001).

'to alter or amend a judgment,' Tenn. R. Civ. P. 59.04, or motions 'to revise' a non-final partial judgment, *see* Tenn. R. Civ. P. 54.02.")

Under Tenn. R. Civ. P. 54.02, the trial court's earlier judgment granting partial summary judgment was clearly "subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties." ***Id***. The trial court acted within its discretion when it changed its mind, reversed its earlier decision, and decided that Vulcan was entitled to summary judgment on its materialman's lien claim. Finding no abuse of that discretion, we conclude that the defendants' issue is without merit.

IV.

A.

The final issue in this case is whether Vulcan properly perfected its materialman's lien. Since the facts as to this issue are not in dispute, we review this matter *de novo* on the record below with no presumption of correctness attaching to the trial court's judgment. ***Staples v. CBL & Associates, Inc.***, 15 S.W.3d 83, 88 (Tenn. 2000).

B.

Seaboard and ConAgra Poultry contend[6] that the trial court erred in ruling that Vulcan properly perfected its lien. They argue that Vulcan did not send a notice of lien to the "owner" of the property – which they assert was ConAgra Poultry – within 90 days of the last delivery of materials, as required by T.C.A. § 66-11-115(b). Vulcan counters by asserting that, under the lien statutes, ConAgra Poultry was not the "owner" but rather a "subsequent purchaser." Because Vulcan recorded its notice of lien in the Office of the Register of Deeds within 90 days of the last delivery of materials, Vulcan argues that it properly perfected its lien as to ConAgra Poultry, a "subsequent purchaser" as that concept is used in T.C.A. § 66-11-112(a).

The subject issue – whether Vulcan effectively perfected its lien – is purely one of statutory construction. *See* ***D.T. McCall & Sons v. Seagraves***, 796 S.W.2d 457, 460 (Tenn. Ct. App. 1990) ("Materialman's liens are creatures of statute."). In resolving the issue now before us, we are mindful of the general principle that "courts do not interpret statutes in isolation, but are required to construe them as a whole, read them in conjunction with their surrounding parts, and view them consistently with the legislative purpose." ***Kradel v. Piper Industries, Inc.***, 60 S.W.3d 744, 750 (Tenn. 2001) (internal quotations omitted); ***State v. Turner***, 913 S.W.2d 158, 160 (Tenn. 1995). As the Supreme Court has noted, the code sections relating to material supplier's liens and their enforcement must

[6]Seaboard and ConAgra Poultry are represented on appeal by the same counsel. A joint brief and reply brief were filed on behalf of these defendants.

be considered *in pari materia.* ***Chattanooga Lumber & Coal Corp. v. Phillips***, 304 S.W.2d 82, 85 (Tenn. 1957).

Material suppliers seeking to avail themselves of the lien statutes "must comply with all the applicable statutory requirements, including those relating to notice, recordation, and proper initiation of suit." ***D.T. McCall & Sons***, 796 S.W.2d at 460. "Tennessee's courts have generally required strict compliance with the lien statutes." ***Id.***; ***Eatherly Constr. Co. v. DeBoer Constr. Co.***, 543 S.W.2d 333, 334-35 (Tenn. 1976); ***Smith v. Chris-More, Inc.***, 535 S.W.2d 863, 863 (Tenn. 1976); ***Sequatchie Concrete Serv. v. Cutter Lab.***, 616 S.W.2d 162, 165 (Tenn. Ct. App. 1980); ***McDonnell v. Amo***, 34 S.W.2d 212, 213 (Tenn. 1930). Our courts have also noted, however, that construction of the lien statutes should not be so strict as to defeat their purpose. ***D.T. McCall & Sons***, 796 S.W.2d at 460; ***Southern Blow Pipe & Roofing Co. v. Grubb***, 260 S.W.2d 191, 196 (Tenn. Ct. App. 1953); ***cf. Don Huckaby Plumbing Co., Inc. v. Cardinal Indus. Mortgage Co.***, 848 S.W.2d 57, 59 (Tenn. 1993).

The statutory provision which creates the materialman's lien, T.C.A. § 66-11-115 (1993), provides, in relevant part, as follows:

> (a) Every journeyman or other person contracted with or employed to work on the buildings, fixtures, machinery, or improvements, or to furnish materials for the same. . . shall have this lien for such work or material; provided, that the subcontractor, laborer or materialman satisfies all of the requirements set forth in § 66-11-145, if applicable.[7]
>
> (b) Within ninety (90) days after the demolition and/or building or improvement is completed, or the contract of such laborer, mechanic, furnisher, or other person shall expire, or such person is discharged, such person shall notify, in writing, the owner of the property on which the building is being erected or the improvement is being made ...that the lien is claimed.

T.C.A. § 66-11-101 (1993) provides as follows:

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[7] T.C.A. § 66-11-145(a) requires a material supplier to "mail, within ninety (90) days of the last day of the month within such work, services or materials were provided, a notice of nonpayment for such work, services or materials to the owner...if its account is, in fact, unpaid." This requirement is separate and distinct from the requirement with respect to the notice of lien. This distinction is clearly set forth in T.C.A. § 66-11-145(e):

> A notice of nonpayment provided in accordance with this section shall not be considered notice required by § 66-11-115(c).

The trial court found that Vulcan had satisfied the requirement under T.C.A. § 66-11-145(a) with respect to the notice of non-payment, and the defendants do not challenge this finding on appeal.

> As used in this part, unless the context otherwise requires:
>
> * * *
>
> (11) "Owner" includes the owner in fee of real property, or of a less estate therein, a lessee for a term of years, a vendee in possession under a contract for the purchase of real property, and any person having any right, title or interest, legal or equitable, in real property, which may be sold under process[.]

ConAgra Poultry claims that it was the "owner" of the subject property as contemplated by T.C.A. § 66-11-115(b); that, consequently, it was entitled to receive a written notice of lien pursuant to that statute; and that the failure of Vulcan to serve such a notice on it, renders Vulcan's lien invalid.

As previously noted, Vulcan registered its notice of lien within 90 days of its last delivery of materials, and mailed a copy of that notice to Seaboard and Kitsmiller. At the time Vulcan mailed the notice of lien, the transfer of the property from Seaboard to ConAgra Poultry had been completed and recorded. The trial court noted that "[a]pparently, neither Seaboard nor ConAgra [Poultry] advised Vulcan of the completed sale of the real estate."

The statute upon which Vulcan primarily relies, T.C.A.§ 66-11-112(a), provides, in relevant part, as follows:

> In order to preserve the virtue of the lien, *as concerns subsequent purchasers or encumbrancers for a valuable consideration without notice thereof, though not as concerns the owner,* such lienor, who has not so registered such lienor's contract, is required to file for record in the office of the register of deeds of the county where the premises, or any part affected lies, a sworn statement similar to that set forth in § 66-11-117, and pay the fees. The register shall file, note and record same, as provided in § 66-11-117. Such filing for record is required to be done within ninety (90) days after the building or structure or improvement is demolished, altered and/or completed, as the case may be, or is abandoned and the work not completed, or the contract of the lienor expires or is terminated or the lienor is discharged, prior to which time the lien shall be effective as against such purchasers or encumbrancers without such registration ....

(Emphasis added).

This statute clearly differentiates between an "owner" and a "subsequent purchaser." The Supreme Court, construing T.C.A. § 64-1112 (precursor to § 66-11-112), has noted that the statute's language

> clearly makes a distinction, between what is required of the furnisher as concerns subsequent purchasers or encumbrancers, on the one hand, and as concerns the owner of the premises on the other hand. The requirement of that section is that registration is required 'as concerns subsequent purchasers or encumbrancers...though not as concerns the owner'.

***Streuli v. Brooks***, 313 S.W.2d 262, 264-65 (Tenn. 1958).

Our review of the relevant Tennessee cases reveals that our courts have clearly and consistently construed "subsequent purchasers or encumbrancers" to mean those persons who have purchased or encumbranced property subsequent to the *attachment* of the material supplier's lien. The time of "attachment" is clear. A material supplier's lien "shall relate to and take effect from the time of the visible commencement of operations[.]" T.C.A. § 66-11-104(a) (Supp. 2001). "Visible commencement of operations" occurs at the time of the first delivery of materials to the site of the improvement. T.C.A. §66-11-101(17) (1993).

In the ***D.T. McCall & Sons*** case, the Court of Appeals, noting that "the requirements for effective notice vary depending on for whom the notice is intended," 796 S.W.2d at 461, stated:

> If the notice is directed toward the property's record owner *at the "visible commencement of operations" or when the materials are provided*, then simple notice without registration or filing will suffice. ***Streuli v. Brooks***, 203 Tenn. 373, 379, 313 S.W.2d 262, 265 (1958); ***Sequatchie Concrete Serv. v. Cutter Laboratories***, 616 S.W.2d at 164; ***Walker Supply Co. v. Corinth Community Development, Inc.***, 509 S.W.2d 514, 516-17 (Tenn.Ct.App.1974). If, however, the notice is intended to be effective insofar as subsequent purchasers and encumbrancers are concerned, registration is necessary and the formal requirements of either Tenn.Code Ann. § 66-11-111 (1982) or Tenn.Code Ann. §§ 66-11-112 and 66-11-117 must be met. ***Tindell Home Center, Inc. v. Union Peoples Bank***, 543 S.W.2d 843, 844-45 (Tenn.1976); ***American City Bank v. Western Auto Supply Co.***, 631 S.W.2d 410, 423 (Tenn.Ct.App.1981).

***Id.*** (Emphasis added). The ***D.T. McCall & Sons*** court specifically found that, where the evidence showed the defendants owned the property at the time of the dispute, but not at the time of the delivery of materials by the lien claimant, the defendants were "subsequent purchasers." ***Id.***

In the case of ***Southern Blow Pipe & Roofing Co. v. Grubb***, 260 S.W.2d 191, 194 (Tenn. Ct. App. 1953), the court noted that "it would appear that all liens if duly recorded would relate to and be effective as of December 1, 1947, the date of commencement of operations." The court stated

that "as respects subsequent encumbrancers without notice thereof (after December 1, 1947), all liens must have been recorded within 90 days after the respective lienors furnished their last materials." ***Id.*** at 194. The upshot of this holding is that the date of commencement of operations is the relevant date in determining whether a purchaser or encumbrancer would be considered as a "subsequent purchasers or encumbrancers" for the purposes of Code 1932, § 7919, a precursor to T.C.A. § 66-11-112. ***Id.***

In ***Brown v. Brown & Co.***, 160 S.W.2d 431 (Tenn. Ct. App. 1941), the court stated the following:

> It thus appears that Chattanooga Properties Corporation became the owner of the recorded title and the First Federal Savings & Loan Association acquired a first mortgage lien upon the property during the ninety days within which the statute [*i.e.*, Code 1932, § 7919] required the registration of complainant's lien.
>
> It is well established by numerous holdings that a mechanic's lien relates back to the date of the visible commencement of the work and if complainant had complied with the statute by recording his claim within the ninety day period there can be no question but that his claim would have priority over the title of Chattanooga Properties Corporation and the lien of the First Federal Savings & Loan Association. *Hence they are "subsequent purchasers and encumbrancers" mentioned in the statute ....*

***Brown***, 160 S.W.2d at 433 (emphasis added). *See also* ***Tindell Home Center, Inc. v. Union Peoples Bank of Anderson County***, 543 S.W.2d 843 (Tenn. 1976) (holding mortgagor of mortgage executed "after the visible commencement of construction on the lot conveyed" was a subsequent encumbrancer).

In ***Owen Lumber & Millwork, Inc. v. National Equity Corp.***, 940 S.W.2d 66 (Tenn. Ct. App. 1996), the material supplier's notice of lien was filed approximately 3½ hours after the filing of a warranty deed conveying ownership of the property. The court, rejecting the purchasers' contention that the conveyance of the property effectively cut off the material supplier's lien rights, held that

> [p]laintiff's lien rights became fixed when the supplies were delivered to the premises since the lien rights are established from the "date of visible commencement of operation." T.C.A. § 66-11-104 (1993). Plaintiff in the case before us filed the notice of lien within ninety days after completion of the structure and thus preserved its lien pursuant to the provisions of T.C.A. § 66-11-112 (1993). *Having properly filed the notice of lien within the ninety day period,*

> *plaintiff's lien has precedence over conveyances made within ninety days after the date of completion.* T.C.A. § 66-11-117 (1993).

***Owen Lumber***, 940 S.W.2d at 68 (emphasis added). The court construed the defendant buyers of the property as subsequent purchasers, noting that "[t]he statute makes it quite clear that an unregistered lien is valid as to subsequent purchasers of the property if the requirements of the various statutes are met ...." ***Id.*** at 69; *see also* ***C & C Aluminum Builders Supply v. Rynd***, 4 S.W.3d 191, 192 (Tenn. Ct. App. 1999) ("[l]iens that attach to real property before a deed conveying such property is recorded have priority over the interest of the vendee.").

In the present case, Vulcan first delivered materials for use in the construction of the improvements to the property on November 20, 1999. Seaboard sold the property to ConAgra Poultry on January 3, 2000, and the warranty deed was recorded January 13, 2000. Thus, ConAgra Poultry was a "subsequent purchaser" under T.C.A. § 66-11-112(a), and Vulcan was required to perfect its lien in either of two ways: "(1) register its contracts pursuant to T.C.A. § 66-11-111 or, (2) file a 'sworn statement' within 90 days of completing work under T.C.A. § 66-11-112." ***Don Huckaby Plumbing Co., Inc. v. Cardinal Indus. Mortgage Co.***, 848 S.W.2d 57, 59 (Tenn. 1993). Vulcan chose the latter method, filing its notice of lien on March 2, 2000.

As Seaboard and ConAgra Poultry correctly point out, T.C.A. § 66-11-115(b) requires that written notice of a claimed lien be furnished to the "owner" within 90 days of the completion of the improvement to the property, or the expiration of the material supplier's contract, or the discharge of the material supplier. This provision does not help ConAgra Poultry because we have determined that it was not "the owner" but rather a "subsequent purchaser" for the purpose of T.C.A. § 66-11-112. Reading the relevant statutes *in pari materia*, we conclude that the concept of the "owner" under § 66-11-115(b) does not include a purchaser who becomes such *subsequent to the date of attachment* of the material supplier's lien. Over a century ago, the Supreme Court noted that

> [a]ny one purchasing property under improvement, and before notice and registration, takes it subject to the statutory notice that mechanics and furnishers may perfect on the inchoate and statutory lien by the statutory notice and registration. The statute is notice to all who deal with the property, and purchasers cannot complain, because they buy with a knowledge of the law, whereby a lien may rest upon the property they buy.

***Green v. Williams***, 21 S.W. 520, 521 (Tenn. 1893).[8]

[8] Purchasers of property now have procedures by which they can protect themselves against inchoate liens. *See, e.g.,* T.C.A. § 66-11-143 (1993).

C.

The defendants raise another issue that is related to their main issue dealing with the notice of lien. They claim that the notice of lien in this case is fatally defective because it lists Seaboard as the owner of the property. The defendants argue that since ConAgra Poultry was the owner of the property when the notice of lien was filed, ConAgra Poultry should have been reflected as such in that instrument.[9] We disagree.

The required contents of the notice of lien are addressed in two statutes. The first of these statutes, in logical progression, is T.C.A. § 66-11-112(a). It requires the filing of "a sworn statement similar to that set forth in [T.C.A.] § 66-11-117." The latter statute provides, in relevant part, as follows:

> A mechanic's lien shall have precedence over all other subsequent liens or conveyances during such time; provided, that a sworn statement of the amount due and/or approximating that to accrue for such work, labor, or materials, and a reasonably certain description of the premises, shall be filed, within the ninety-day period referred to in § 66-11-115(b) ....

The notice of lien filed in this case is sworn to and it contains a "statement of the amount due" and "a reasonably certain description of the premises." It is clear that the contents of the notice of lien in this case satisfy the requirements set forth in these two relevant statutes. Significantly, neither the aforesaid two statutes nor any other section of the statutory scheme pertaining to a materialman's lien requires that the filed notice of lien contain the name of a "subsequent purchaser." We are without authority to impose additional requirements not mandated by the legislative branch. As the Supreme Court has pointed out,

> [a] materialman's lien is altogether statutory, and, when the lawmaking body prescribes the terms upon which it may be asserted, it is beyond the power of this court to waive its provisions or substitute others.

***McDonnell v. Amo***, 34 S.W.2d 212, 213 (Tenn. 1931).

D.

We agree with the trial court's judgment that Vulcan properly perfected its lien in this case.

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[9]The notice of lien in this case is attached as an appendix to this opinion.

V.

The judgment of the trial court is affirmed. Costs on appeal are taxed against Seaboard Farms of Chattanooga, Inc. and ConAgra Poultry Company. This case is remanded to the trial court for enforcement of that court's judgment and for collection of costs assessed below, all pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE